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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 THEODORE B. EDENSTROM,
9 Plaintiff,

10 v.

11 THURSTON COUNTY, *et al.*,
12 Defendants.

CASE NO. C16-5982RJB

ORDER ON REVIEW OF
REFUSAL TO RECUSE

13 This matter comes before the Court on Plaintiff's Affidavit of Prejudice (Dkt. #58), which
14 the presiding judge, the Honorable Robert J. Bryan, has construed as a request for his recusal.
15 After review of the document, Judge Bryan declined to recuse himself. Dkt. #59. In accordance
16 with the Local Rules of this District, the matter was then referred to the Undersigned for review.
17 LCR 3(e).

18 In his Affidavit, Plaintiff states that he "believe[s], that Mr. Robert J. Bryan has either some
19 personal, undisclosed bias against Plaintiff, or has an interest adverse to Plaintiff." Dkt. #58 at 1.
20 This "belief" appears to be based on Judge Bryan's prior decision granting summary judgment in
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1 favor of Defendants, to which Plaintiff objects.¹ Dkt. #58 at 1-2. Indeed, Plaintiff specifically
2 references sections of the summary judgment Order with which he disagrees. *Id.* at 2.

3 Pursuant to 28 U.S.C. § 455(a), a judge of the United States shall disqualify himself in any
4 proceeding in which his impartiality “might reasonably be questioned.” Federal judges also shall
5 disqualify themselves in circumstances where they have a personal bias or prejudice concerning a
6 party or personal knowledge of disputed evidentiary facts concerning the proceeding. 28 U.S.C.
7 § 455(b)(1).

8 Under both 28 U.S.C. §144 and 28 U.S.C. § 455, recusal of a federal judge is appropriate
9 if “a reasonable person with knowledge of all the facts would conclude that the judge’s impartiality
10 might reasonably be questioned.” *Yagman v. Republic Insurance*, 987 F.2d 622, 626 (9th
11 Cir.1993). This is an objective inquiry concerned with whether there is the appearance of bias, not
12 whether there is bias in fact. *Preston v. United States*, 923 F.2d 731, 734 (9th Cir.1992); *United*
13 *States v. Conforte*, 624 F.2d 869, 881 (9th Cir.1980). In *Liteky v. United States*, 510 U.S. 540
14 (1994), the United States Supreme Court further explained the narrow basis for recusal:

15 [J]udicial rulings alone almost never constitute a valid basis for a bias or
16 partiality motion. . . . [O]pinions formed by the judge on the basis of facts
17 introduced or events occurring in the course of the current proceedings, or of
18 prior proceedings, do not constitute a basis for a bias or partiality motion
19 unless they display a deep seated favoritism or antagonism that would make
20 fair judgment impossible. Thus, judicial remarks during the course of a trial
21 that are critical or disapproving of, or even hostile to, counsel, the parties, or
22 their cases, ordinarily do not support a bias or partiality challenge.

23 *Id.* at 555.

24 ¹ Plaintiff also has a pending motion for reconsideration related to that summary judgment Order.
Dkt. #57.

1 Plaintiff cites no evidence which would support a finding of impartiality, prejudice or bias
2 on Judge Bryan's part. While it is clear he believes that Judge Bryan's summary judgment ruling
3 was erroneous, this is insufficient to form the basis of a valid request for recusal. Plaintiff is
4 entitled to appeal any rulings he believes to be in error, but he may not properly seek recusal of
5 the presiding judge on those grounds. A judge's conduct in the context of pending judicial
6 proceedings does not constitute the requisite bias under 28 U.S.C. § 144 or § 455 if it is prompted
7 solely by information that the judge received in the context of the performance of his duties. Bias
8 is almost never established simply because the judge issued adverse rulings against a party.

9 In order to overcome this presumption, Plaintiff would have to show that facts outside the
10 record influenced the decisions, or that the judge's rulings were so irrational that they must be the
11 result of prejudice. Plaintiff does not allege any facts outside the record that improperly influenced
12 the decisions in this matter. Accordingly, the Court finds no evidence upon which to reasonably
13 question Judge Bryan's impartiality and AFFIRMS his denial of Plaintiff's request that he recuse
14 himself.

15 The Clerk SHALL provide copies of this Order to Plaintiff, all counsel of record, and to
16 Judge Bryan.

17 Dated this 6 day of September, 2017.

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19 RICARDO S. MARTINEZ
20 CHIEF UNITED STATES DISTRICT JUDGE
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